

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of November, two thousand twelve.

PRESENT: JOHN M. WALKER,
RICHARD C. WESLEY,
PETER W. HALL,
Circuit Judges.

George Byrne,

Plaintiff-Appellant,

v.

11-5272

George B. Ceresia, Sued in his Official and Individual Capacities, Jan Plumadore, Sued in his Official and Individual Capacities, New York State Office of Court Administration,

Defendants-Appellees.

FOR APPELLANT: Michael H. Sussman, Sussman & Watkins,
Goshen, NY.

FOR APPELLEE: Claude S. Platton, Steven C. Wu,
Assistant Solicitor Generals, Barbara D.
Underwood, Solicitor General, for Eric T.
Schneiderman, Attorney General of the
State of New York, New York, NY.

1 Appeal from the United States District Court for the
2 Southern District of New York (Pauley, J.).
3

4 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
5 **AND DECREED** that the judgment of the United States District
6 Court for the Southern District of New York is **AFFIRMED**.

7 Plaintiff-Appellant George Byrne ("Byrne") appeals from
8 a November 22, 2011 memorandum and order of the United
9 States District Court for the Southern District of New York
10 (Pauley, J.) granting Defendants-Appellees the Honorable
11 George B. Ceresia, the Honorable Jan Plumadore, and the New
12 York State Office of Court Administration ("OCA") (together,
13 the "Defendants") summary judgment. Byrne commenced this
14 action under 42 U.S.C. § 1983, alleging that Defendants
15 violated his constitutional right to due process by failing
16 to provide adequate notice and an opportunity to be heard
17 before terminating his position as a court officer-captain
18 for the OCA. He further alleged that Defendants failed to
19 accommodate his disability in violation of the New York
20 State Human Rights Law ("NYSHRL"), N.Y. Executive Law §§
21 290, 296. The district court held that Byrne had suffered
22 no deprivation of due process and also declined to exercise
23 supplemental jurisdiction over Byrne's NYSHRL claims. The
24 panel has reviewed the briefs and the record in this appeal

1 and agrees unanimously that oral argument is unnecessary
2 because "the facts and legal arguments [have been]
3 adequately presented in the briefs and record, and the
4 decisional process would not be significantly aided by oral
5 argument." Fed. R. App. P. 34(a)(2)(C). For the following
6 reasons, we affirm.

7 Where a due process claim is "based on random,
8 unauthorized acts by state employees," there is no due
9 process violation "so long as the State provides a
10 meaningful post-deprivation remedy." *Hellenic Am.*
11 *Neighborhood Action Comm. v. City of N.Y.*, 101 F.3d 877, 880
12 (2d Cir. 1996) (citing *Hudson v. Palmer*, 468 U.S. 517, 535
13 (1984)). Here, Byrne does not challenge OCA's established
14 procedures for terminating disabled employees. Rather, he
15 claims that Defendants failed to follow those procedures and
16 thereby deprived him of due process. Considering Byrne's
17 allegations, the availability of an Article 78 proceeding
18 under New York's Civil Practice Law and Rules was sufficient
19 to satisfy his right to due process. *See Hellenic Am.*
20 *Neighborhood Action Comm.*, 101 F.3d at 881 (collecting cases
21 holding that Article 78 provides an adequate post-
22 deprivation remedy).

1 Byrne counters that the principle that a post-
2 deprivation remedy is adequate to satisfy due process is
3 inapplicable when, as here, the state actor who effected the
4 erroneous deprivation is a "high-ranking official with final
5 authority over significant matters." *DiBlasio v. Novello*,
6 344 F.3d 292, 302 (2d Cir. 2003) (internal quotation marks
7 omitted). We disagree. As the district court correctly
8 concluded, then-Chief Administrative Judge Pfau—not
9 Defendants—"possessed and exercised the final authority to
10 approve [Byrne's] termination."

11 We also reject Byrne's contention that the district
12 court abused its discretion by failing to exercise
13 supplemental jurisdiction over his NYSHRL claims. It is
14 well settled that where the federal claims are eliminated
15 before trial, "courts should generally decline to exercise
16 pendent jurisdiction over remaining state law claims."
17 *Klein & Co. Futures, Inc. v. Bd. of Trade*, 464 F.3d 255, 262
18 (2d Cir. 2006). In deciding whether to exercise
19 jurisdiction over supplemental state law claims, district
20 courts should "balance the values of judicial economy,
21 convenience, fairness, and comity." *Id.* (citing
22 *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7
23 (1988)). Here, the district court reasoned that "it would

1 be inefficient for parallel litigation against the judges in
2 their individual capacities to proceed in federal court" and
3 that the parties "can conveniently litigate the case in
4 state court." This was not an abuse of discretion.

5 We have considered Byrne's remaining arguments and,
6 after a thorough review of the record, find them to be
7 without merit.

8 For the foregoing reasons, the judgment of the district
9 court is hereby **AFFIRMED**.

10 FOR THE COURT:
11 Catherine O'Hagan Wolfe, Clerk
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